Saskatchewan
Occupational
Health and
Safety Council

Review of

The Occupational Health and

Safety Act

A Report of the

Occupational Health and Safety Council

September 1989

September 1989

The Honourable Grant Schmidt
Minister of Human Resources, Labour and Employment
Room #340, Legislative Building
REGINA, Saskatchewan
S4S 0B3

Dear Sir:

We are pleased to present our report on the review of The Occupational Health and Safety Act.

Respectfully,

Dr. N. Fyczycz, Chairperson

Mrs. B. Abrey, Member

Mr. F. Hartman, Member

Mr. K. Arnott, Member

Mrs. J. Kerslake, Member

Mr. K. Brown, Member

Mr. R. Lacroix, Member

Mrs. F. Empringham, Member

Mr. R. Rowley, Member

Mr. M. Goulard, Member

Mr. G. Todd, Member

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Executive Summary and Recommendations

The Occupational Health and Safety Act was proclaimed in 1972 and, although it has since been amended, its philosophy and direction have remained substantially unchanged. The Minister of Human Resources, Labour and Employment, the Honourable Grant Schmidt, while recognizing the merits of the existing legislation, concluded an indepth review of the Act was timely. Accordingly, the Minister asked the Occupational Health and Safety Council to seek public opinion on the need to amend the Act and provide him with advice and recommendations on what changes are required.

The Council, established under the Act, represents employers, labour, agriculture, the health care sector, the Workers' Compensation Board and occupational health and safety agencies. The Council requested public input into its review and received 66 briefs, 38 of which were presented orally. Following consideration of the briefs presented and an analysis of the legislation, the Council concluded that The Occupational Health and Safety Act has served Saskatchewan well and is fundamentally sound. There is, however, an opportunity to improve the Act and the administration of the occupational health and safety program.

During its review of the Act, the Council identified certain principles which it believes are essential to achieving a healthy and safe workplace:

- Saskatchewan's long tradition of leadership with respect to workplace health and safety must be continued.
- The health and safety of individual employees must continue to be a fundamental principle of the legislation and of primary importance in the administration of the Act.
- Employees must be able to participate in a meaningful way in addressing occupational health and safety concerns.
- Employees must be educated in their rights and responsibilities under the legislation, and properly trained in safe workplace practices, in order to facilitate their participation.
- Improved health and safety requires commitment and co-operation on the part of employers. Employer commitment and co-operation must be promoted through education, effective enforcement of the legislation and adequate sanctions for non-compliance.
- An integrated management approach to occupational health and safety must be encouraged through the development and regulation of workplace or sectoral occupational health and safety programs.

- The occupational health and safety program must be adequately funded, and the staff of the Occupational Health and Safety Branch properly trained, to enable the Branch to carry out its mandate under the Act.

- All parties affected by the Act must be able to participate in the development and administration of the Act.

In its review, the Council identified opportunities to strengthen existing provisions of the Act as well as break new ground in the occupational health and safety field in the province. In particular, the Council expressed concern that the Act has not adequately addressed the occupational health and safety needs of employees or employers in the small business and agricultural sectors. Given the lack of input from the farm community, the Council believes further review and consultation is required before substantive recommendations can be made in this area.

In the small business sector, however, the Council believes that employee participation will enhance workplace health and safety. The Council has concluded that increased emphasis should be placed on employee participation by requiring committees or employee designates in certain workplaces employing fewer than 10 employees.

The Council concurs with presentations calling for better enforcement. It believes that substantial increases in penalties should be provided in the Act and are a necessary adjunct to effective enforcement.

Occupational health and safety programs designed to meet the needs of larger workplaces, and the development of safety resources and personnel within associations of employers and high risk sectors, are identified as potential directions for consideration by government.

The conclusions of the Council are reflected in the following recommendations.

Recommendation 1

The government should review the administration of The Occupational Health and Safety Act to:

- allow effective participation by employers and employees in determining the direction, scope and nature of the program; and

- improve communication with the Workers' Compensation Board.

Recommendation 2

The government should immediately increase funding to ensure effective administration and enforcement of the Act, and to implement appropriate educational programs.

Recommendation 3

Funding of the Occupational Health and Safety Branch by the Workers' Compensation Board should be limited to those expenditures associated with services provided directly to the industries assessed by the Board. Alternative sources of funding should be found for services provided to the general public and industries not assessed by the Workers' Compensation Board.

Recommendation 4

The legislated duties of the Occupational Health and Safety Council should include an annual report to the Minister on the future direction, scope and funding of occupational health and safety, including a review of the program of the Occupational Health and Safety Branch.

Recommendation 5

The Act should provide for the education of employers and employees, particularly occupational health committee members, regarding their rights and responsibilities under the legislation.

Recommendation 6

The Act should empower an occupational health officer to:

- stop any activity or use of any equipment, plant or process which is in contravention of the Act or regulations and which may cause serious injury or disease to an employee;

- take such steps as may be necessary, including locking out and tagging any equipment or plant, to ensure the activity or use is not resumed until it complies with the legislation.

Recommendation 7

Ongoing training should be provided to occupational health officers in all aspects of occupational health and safety to maintain their competence and credibility and to ensure they have sufficient understanding of the workplaces for which they are responsible to properly perform their duties.

Recommendation 8

The Act should protect occupational health officers, as well as other public servants, from civil liability, provided they are administering the Act in good faith.

Recommendation 9

Every person, including any project manager, owner, landlord or lessor, whose action or inaction may adversely affect the health and safety of an employee, whether employed by that person or not, should be required by the Act to ensure the health and safety of that employee.

Recommendation 10

In cases of joint responsibility for the health and safety of employees, the Act should:

- provide an effective mechanism for predetermining the responsibility of each party for particular aspects of employee health and safety, as well as resolving any dispute over responsibility;

- require the parties to identify and allocate responsibility for employee health and safety.

Recommendation 11

The term "welfare" should be defined in the Act to clarify that it refers to matters which impact directly on the health and safety of employees in the workplace.

Recommendation 12

The Act should be amended to:

- include in the definition section the terms "practicable" and "reasonably practicable"; and

- clarify that the general duty to "ensure, insofar as is reasonably practicable, the health, safety and welfare at work" of persons does not override the duty to comply with more stringent requirements found in other sections of the Act and regulations.

Recommendation 13

A program should be implemented to educate employees and employers on the legislation and associated procedures with respect to an employee's right to refuse unusually dangerous work.

Recommendation 14

The Act should allow an employer to require another employee to perform work which has been refused by an employee who believes it is unusually dangerous, provided that:

- the work does not contravene any provision of the Act or regulations;
- the subsequent employee is advised in writing of the grounds for refusal and the reasons the employer considers the work can be performed safely; and
- the subsequent employee has been advised of his or her right to refuse this work.

Recommendation 15

The Act should allow an employee to appeal a decision made by an occupational health officer who does not support the employee's refusal to work pursuant to section 26.

Recommendation 16

Employees participating in any activity to ensure their health and safety should be protected by the Act.

Recommendation 17

The government should consider including in the Act a provision for the establishment of a board or other agency to which disputes under the Act could be referred.

Recommendation 18

Employers should provide, so far as is reasonably practicable:

- protection for employees who are unusually sensitive to a workplace contaminant;
- any necessary additional protection for a pregnant employee and her fetus;
- alternative work for employees who have unusually high sensitivity to a contaminant as a result of over-exposure in the workplace.

Recommendation 19

The Act should require the employer, or a designated agency, to retain for a specified period all records of exposure of employees to those toxic substances set out in the regulations.

Recommendation 20

The Act should be amended to specify the rights of employees required to undergo medical examinations pursuant to the Act.

Recommendation 21

The Act should provide for occupational health committees to be established in high risk workplaces where there are fewer than ten employees.

Recommendation 22

The legislation should require the owner of a high risk workplace to form a committee where two or more employers collectively have more than 10 employees, but individually fewer than 10.

Recommendation 23

To better serve the needs of employers and employees, the Act should provide discretion to adapt the requirements for establishing occupational health committees by allowing:

- on a multi-employer work site, the formation of a single occupational health committee;
- on a single employer work site where mutually agreeable to the employer and employees, the formation of more than one occupational health committee.

Recommendation 24

The Act should provide for the election of an employee designate in certain workplaces with fewer than 10 employees, where requested by the employees.

Recommendation 25

The Act should be amended to:

- ensure occupational health committee members have reasonable opportunity and means, without loss of benefits, to fulfill their duties;
- enable the duties of occupational health committees to be specified in detail in the regulations or a code of practice.

Recommendation 26

The Act should require that, with due consideration of the right to privacy, all information necessary to ensure compliance with the Act and regulations be readily accessible to employees and occupational health committees.

Recommendation 27

Where the Act requires the employer to consult with his or her employees, management decisions should reflect reasonable employer-employee consultation and, where it is alleged this has not happened, the legislation should provide for a review of the decision to ensure the problem identified has been appropriately addressed.

Recommendation 28

Fines for contravening the Act or regulations should be increased substantially.

Recommendation 29

A person who fails to report on the progress made in complying with a notice of contravention, or fails to comply with requirements in the notice, should be subject to a fine, which may be paid without appearing in Court, in the amount of:

- in the case of failure to report progress, $200;
- in the case of non-compliance, $500.

Recommendation 30

Government should explore the establishment of a fund for the deposit of fines or surcharges assessed under the Act to be used to pay for education and delivery of programs in occupational health and safety.

Recommendation 31

The Act should require those employers who meet certain criteria to state their policies on occupational health and safety and implement occupational health and safety programs developed in consultation with their occupational health committees, employees or employee health and safety designates.

Recommendation 32

An occupational health and safety program should include:

- a statement of policy;
- identification of health and safety risks;
- allocation of responsibility to ensure implementation;
- an outline of plant design and work processes to address the risks; and
- a plan to train employees in safe work practices.

Recommendation 33

The development of training programs in safe work practices by employers and sectoral associations or other agencies should be actively promoted.

Recommendation 34

The legislation should permit the establishment of standards for training programs in safe work practices.

Recommendation 35

Priority should be given to enforcing the legislation with respect to an employer's duty to train his or her employees in safe work practices.

Recommendation 36

The government should explore the possibility of:

- including occupational health and safety education in the curricula of high schools and adult educational institutions;
- utilizing government programs directed at small businesses to promote awareness of occupational health and safety legislation and practices;
- promoting safety awareness through the media.

Recommendation 37

Sectoral associations and other appropriate agencies should be promoted as an effective means of enabling small businesses to comply with their duties to provide training and occupational health and safety programs. Such training and programs should be monitored.

Recommendation 38

The government should address the serious issues surrounding the health and safety of farmers and farm employees as a matter of the utmost urgency. As a first step, a council could be formed, representative of all sectors of the farming community and supported by appropriate resource persons from the Workers' Compensation Board and health and safety agencies, to advise the government on an appropriate approach to the health and safety of Saskatchewan farmers and farm employees.

Review of

The Occupational Health and Safety Act

Report of the

Occupational Health and Safety Council

Preface

The Evolution of Occupational Health and Safety Legislation in Saskatchewan

The Occupational Health and Safety Act, proclaimed in 1972, reflected a fundamental change in the concept of workplace health and safety. The fragmented, unco-ordinated role of government in the protection of employees from injury and disease was replaced by a holistic approach, combining several disciplines and agencies at a centralized location in the Department of Labour. The Act recognized the interdependency of medicine, hygiene, engineering and accident prevention in addressing the problems caused by the conditions and processes of the workplace. Saskatchewan was the first jurisdiction in North America to adopt this concept.

Above all, the new legislation recognized the role employees must play in achieving safe and healthy conditions in the workplace by providing a framework for employer-employee co-operation. The Act required employers with ten or more employees to establish an occupational health committee, a mechanism whereby the employer and employees could together identify and resolve occupational health and safety problems.

Since 1972, the Act has undergone few changes. In 1977, two important amendments established an employee's right to refuse unusually dangerous work, along with protection from discrimination for employees who exercise this right or participate in the work of a committee. A further amendment in that same year authorized occupational health officers to write a notice of contravention and stop work where the officer believes a risk of serious injury to an employee is imminent.

The last significant legislative change occurred in 1988, when provisions to implement the Workplace Hazardous Materials Information System (WHMIS) were introduced. This system is based on an inter-jurisdictional agreement to establish a uniform system for the identification and labelling of hazardous materials.

Regulations were also introduced and updated during this period. Mines regulations dealing with all health and safety aspects of mining were enacted in 1978. The Occupational Health and General Regulations were enacted in 1981. Further changes in 1986 combined the Occupational Health and General Regulations with the Accident Prevention Regulations to form the Occupational Health and Safety Regulations, which were revised in 1988 to include the WHMIS provisions and provide enhanced first aid requirements.

During the 17 years the Act has been in force, it has provided a sound basis for the implementation of good workplace health and safety practices in larger businesses, particularly in the industrial sector. Workplace deaths are one measure of the Act's effectiveness. During the period 1983 - 1988, work-related fatalities were 40 percent lower than during the 1977 - 1982 period.

The Act has, however, not adequately addressed health and safety needs in two other areas. Even though the Branch has operated a farm safety program for the last three years, farm fatalities still make up a disproportionately large percentage of work-related deaths.

Nor has the Act had much impact on employees in small businesses. Injury rates in small businesses are significantly higher than in large businesses. Few of these workplaces have established occupational health committees or implemented safe workplace training programs, and awareness of health and safety issues is low.

The Act has successfully charted the direction of occupational health and safety over the years but, given the significant social and economic changes since its enactment, it is timely to review the future course of the legislation.

The Occupational Health and Safety Council

The Occupational Health and Safety Council is established under the Act to be representative of employers, labour, agriculture, the health care sector, the Workers' Compensation Board and occupational health and safety agencies.

The following persons were appointed to Council by the Lieutenant Governor in Council:

Dr. N. Ficzycz, (chairperson), Saskatchewan Medical Association;
Mrs. B. Abrey, Agriculture;
Mr. K. Arnott, United Steelworkers of America;
Mr. K. Brown, Workers' Compensation Board;
Mrs. F. Empringham, Empringham Catering Service Ltd.;
Mr. M. Goulard, Weyerhaeuser Canada Limited;
Mr. F. Hartman, Saskatchewan Building and Construction Trades Council;
Mrs. J. Kerslake, Saskatchewan Registered Nurses Association;
Mr. R. Lacroix, Potash Corporation of Saskatchewan;
Mr. R. Rowley, Saskatchewan Safety Council;
Mr. G. Todd, Energy and Chemical Workers' Union.

The Review Process

The Minister of Human Resources, Labour and Employment requested the Occupational Health and Safety Council to review the Act and recommend appropriate changes by the fall of 1989.

The Council was asked to give special consideration to four major areas:

1) Employer commitment, including:

- visible occupational health and safety programs;
- sectoral programs, particularly for small business; and
- private sector occupational health and safety resources and expertise.

2) Enforcement, including:

- accountability for workplace health and safety;
- alternative sanctions; and
- penalties for non-compliance.

3) Employee involvement, including:

- protection of persons exercising legislated rights;
- requirements for, and role of, occupational health committees;
- employee representation in small workplaces; and
- employee access to information necessary for his or her health and safety.

4) Program delivery issues.

The Council invited participation by sending 150 letters to major associations and agencies, and placing advertisements in newspapers. Sixty-six written submissions were received, 38 of which were presented orally to the Council in Saskatoon and Regina during the week of June 5, 1989.

The Council thanks all organizations and individuals for their submissions which have been given due consideration in the course of its deliberations. The recommendations in this report are designed to address the issues that were brought to the attention of the Council through the written and oral presentations.

Following consideration of the briefs presented and an independent analysis of the legislation, the Council concluded that The Occupational Health and Safety Act has served Saskatchewan well and is still fundamentally sound. There is, however, an opportunity to improve the Act and the administration of the occupational health and safety program.

During its review of the Act, the Council identified certain principles which it believes are essential to achieving a healthy and safe workplace:

- Saskatchewan's long tradition of leadership with respect to workplace health and safety must be continued.

- The health and safety of individual employees must continue to be a fundamental principle of the legislation and of primary importance in the administration of the Act.

- Employees must be able to participate in a meaningful way in addressing occupational health and safety concerns.

- Employees must be educated in their rights and responsibilities under the legislation, and properly trained in safe workplace practices in order to facilitate their participation.

- Improved health and safety requires commitment and co-operation on the part of employers. Employer commitment and co-operation must be promoted through education, effective enforcement of the legislation and adequate sanctions for non-compliance.

- An integrated management approach to occupational health and safety must be encouraged through the development and regulation of workplace or sectoral occupational health and safety programs.

- The occupational health and safety program must be adequately funded, and the staff of the Occupational Health and Safety Branch properly trained, to enable the Branch to carry out its mandate under the Act.

- All parties affected by the Act must be able to participate in the development and administration of the Act.

Council believes the recommendations contained in this report reflect these principles and will lead to a healthier and safer workplace.

Chapter 1

The Administration of The Occupational Health and Safety Act

The Roles of Key Players

The Occupational Health and Safety Branch of the Department of Human Resources, Labour and Employment promotes occupational health and safety through enforcement of the Act and provision of informational and advisory services. Program costs are recovered from the Workers' Compensation Board and financed through employer assessments, while the policies and implementation of the program are determined by government processes.

Employers and employees are also vitally interested in workplace health and safety issues.

The administration of a program with so many diverse interests is complicated. Briefs to the Council identified three basic problems arising from this situation:

- Lack of communication between the key players, particularly employers and employees, who are most affected but have no input into the decision-making process.
- Lack of Branch accountability for program delivery to the funding agency and other key players.
- Lack of co-ordination of workplace safety initiatives due to the separate roles of the Branch and the Board.

Three options emerged from the discussions:

- Transfer the Occupational Health and Safety Branch from the Department to the Workers' Compensation Board.
- Move the Branch to a separate agency.
- Enhance the present administration to include a formal mechanism for communication with key players, as well as consultation on the occupational health and safety program.

The Council agreed that the ability to resolve the problems identified by participants in the review, not the location of the Branch, was the more important consideration. While all three options would address the concerns expressed in the briefs, the third was clearly preferred.

Recommendation 1

The government should review the administration of The Occupational Health and Safety Act to:

- allow effective participation by employers and employees in determining the direction, scope and nature of the program; and
- improve communication with the Workers' Compensation Board.

Adequacy of Funding

Lack of adequate funding to administer the Act was a recurring subject in many briefs presented to the Council. From the opinions presented, the Council concluded that the Department lacks the resources and personnel to effectively administer the Act. Further, the Council considers the matter to be urgent and recommends the government take immediate steps to ensure adequate resources are provided for this purpose.

Recommendation 2

The government should immediately increase funding to ensure effective administration and enforcement of the Act, and to implement appropriate educational programs.

Funding of the Occupational Health and Safety Branch

All costs associated with the Occupational Health and Safety Branch are recoverable from the Workers' Compensation Board and, therefore, are borne directly by employers participating in the Workers' Compensation Board program. The Council, in reviewing briefs on this issue, concluded it is reasonable to require these employers to carry the costs of the Branch program which relate directly to them. In essence, the cost of the program is a cost of doing business.

There are, however, Branch programs and services, such as the farm safety program and some activities of the Radiation Safety Unit, that are delivered to the general public and employers who are not assessed by the Workers' Compensation Board. The costs of these services may not be legitimate charges to those employers who are assessed by the Board. The Council was particularly concerned that any enhancement of farm safety programming, desirable as it may be, would be an unwarranted cost to employers in the Workers' Compensation Board program. Council feels that alternative sources of funding should be identified for these services.

Recommendation 3

Funding of the Occupational Health and Safety Branch by the Workers' Compensation Board should be limited to those expenditures associated with services provided directly to the industries assessed by the Board. Alternative sources of funding should be found for services provided to the general public and industries not assessed by the Workers' Compensation Board.

Council Report to the Minister

The Council believes the Minister should have access to timely and non-partisan advice on occupational health and safety issues. A body such as the Occupational Health and Safety Council, which represents several diverse and important sectors of the economy, could play such a role. The Council recommends, therefore, that its role be enhanced.

Recommendation 4

The legislated duties of the Occupational Health and Safety Council should include an annual report to the Minister on the future direction, scope and funding of occupational health and safety, including a review of the program of the Occupational Health and Safety Branch.

Chapter 2

The Powers and Duties of the Occupational Health and Safety Branch and Occupational Health Officers

Education

The need to provide more education to employers and employees regarding their rights and responsibilities under the Act was a dominant theme in most presentations. The Council, for the purpose of this report, defines "education" to mean understanding the intent of, and procedures associated with, the legislation. "Training" is the acquisition of skills necessary to perform work in a healthy and safe manner.

Neither The Occupational Health and Safety Act nor The Workers' Compensation Act require the agencies responsible for administering these Acts to provide such education. Education programs may be encouraged but the power to conduct such programs is discretionary.

The Council felt that the education of employers and employees, in particular occupational health and safety committee members, in their legislated rights and responsibilities was an essential step to improved communication and increased co-operation between management and labour. A better understanding of their respective roles in the control of health and safety risks ought to result in more meaningful dialogue between employers and employees.

There is a consensus within the Council that such education should be mandatory. The availability of standardized, quality education programs provided or approved by the Branch is essential to understanding and complying with the legislation.

Recommendation 5

> The Act should provide for the education of employers and employees, particularly occupational health committee members, regarding their rights and responsibilities under the legislation.

Powers and Duties of Occupational Health Officers

Although the Act requires an occupational health officer to stop an activity which may cause imminent serious personal injury to an employee, briefs presented to the Council supported a broader application of this provision as an effective means to enforce the legislation.

Employers and officers recognize that a notice of contravention requiring work to stop is an immediate and effective deterrent to non-compliance with the provisions of the Act or regulations; however, the notice relates only to the specific contravention and cannot be used, as some briefs advocated, to stop work entirely on a badly run site. As well, the phrase "risk of serious personal injury is or will be imminent" is difficult to interpret, particularly when used in the context of long-term risks to health through exposure to toxic substances.

Although the Council does not believe the power to stop work should be extended to cover the entire workplace, it endorses those comments in the briefs on the value of stop work orders and believes the Act should allow an officer to immediately stop any activity in contravention of the Act which could result in serious injury or disease to an employee.

Recommendation 6

The Act should empower an occupational health officer to:

- stop any activity or use of any equipment, plant or process which is in contravention of the Act or regulations and which may cause serious injury or disease to an employee;

- take such steps as may be necessary, including locking out and tagging any equipment or plant, to ensure the activity or use is not resumed until it complies with the legislation.

Training Occupational Health Officers

Occupational health officers must deal with health and safety issues and concerns in many different industries and circumstances. They have enforcement responsibilities which may result in legal proceedings. They require a precise and complete knowledge of the legislation, as well as an understanding of the legal system and processes.

Some briefs identified a need to provide occupational health officers with initial and ongoing training in their duties. This training must be updated to address the expanding field of occupational health and safety. Training programs should be developed and implemented to ensure the officers have sufficient understanding of the workplaces for which they are responsible to properly perform their duties.

Recommendation 7

Ongoing training should be provided to occupational health officers in all aspects of occupational health and safety to maintain their competence and credibility and to ensure they have sufficient understanding of the workplaces for which they are responsible to properly perform their duties.

Protection of Occupational Health Officers

Precedents set in several jurisdictions have established that public servants may be liable for damages in a civil suit if they do not properly perform their duties. The Council reached a consensus that a public servant acting in good faith should be protected by legislation from civil liability.

Recommendation 8

The Act should protect occupational health officers, as well as other public servants, from civil liability, provided they are administering the Act in good faith.

Chapter 3

General Requirements

Duties of Employers and Other Persons

The Act requires an employer to ensure, insofar as is reasonably practicable, the health, safety and welfare at work of his or her employees. This envisages a simplistic employer-employee relationship, and fails to address the complex hiring and work management systems which exist in increasing numbers of workplaces.

Such complex arrangements are found in a variety of situations. Construction is an example where the safety of an employee may depend on not only the employer, but also project management, the owners of the property and other employers and employees. At present, landlords may not be accountable for their action or inaction when facilities they control adversely affect the health and safety of employees. In addition, suppliers and lessors can supply or lease equipment which contravenes the legislation but they are not subject to the requirements of the Act.

The Council believes that any person whose action or inaction affects the health and safety of an employee should be accountable for such conduct. In cases of joint responsibility, each party should be accountable for those aspects of health and safety which are directly under his or her control. The Council recommends these parties be required to identify and allocate those responsibilities before, or as soon as practicable after, work commences.

Recommendation 9

Every person, including any project manager, owner, landlord or lessor, whose action or inaction may adversely affect the health and safety of an employee, whether employed by that person or not, should be required by the Act to ensure the health and safety of that employee.

Recommendation 10

In cases of joint responsibility for the health and safety of employees, the Act should:

- provide an effective mechanism for predetermining the responsibility of each party for particular aspects of employee health and safety, as well as resolving any dispute over responsibility;
- require the parties to identify and allocate responsibility for employee health and safety.

Definition of "welfare"

The legislation requires an employer to ensure, insofar as is reasonably practicable, the health, safety and welfare at work of his or her employees. The term "welfare" is used elsewhere in the Act, but is not defined.

The Council believes "welfare" should be defined to restrict its interpretation to those matters which impact directly on the health and safety of an employee.

Recommendation 11

The term "welfare" should be defined in the Act to clarify that it refers to matters which impact directly on the health and safety of employees in the workplace.

Definition and use of terms "practicable" and "reasonably practicable"

The terms "practicable" and "reasonably practicable" are defined in the regulations rather than in the Act. Although these terms reflect the high degree of responsibility required of certain persons, the Council believes they should be defined in the Act to reinforce their importance and the degree of responsibility they demand.

As well, concern was expressed to the Council that the general duty to "ensure, insofar as is reasonably practicable, the health, safety and welfare at work" of persons has been interpreted to override the duty to comply with more stringent requirements found in other sections of the Act and regulations. The Council recommends the legislation be amended to clarify that all duties must be performed to the standard specified in the particular section of the Act or regulations.

Recommendation 12

The Act should be amended to:

- include in the definition section the terms "practicable" and "reasonably practicable"; and
- clarify that the general duty to "ensure, insofar as is reasonably practicable, the health, safety and welfare at work" of persons does not override the duty to comply with more stringent requirements found in other sections of the Act and regulations.

Refusal of Unusually Dangerous Work by Employees

The exercise of an employee's right under section 26 to refuse to do unusually dangerous work depends on the employee's understanding of the legislation and procedures involved, as well as his or her protection from discriminatory action by the employer. Several briefs emphasized this point and advocated better education of employees regarding the refusal of dangerous work. The Council concurs with this recommendation.

Recommendation 13

A program should be implemented to educate employees and employers on the legislation and associated procedures with respect to an employee's right to refuse unusually dangerous work.

Other briefs recommended that the right to refuse unusually dangerous work should be enhanced. The Council agreed that, before an employee is asked to do work refused by another employee, the second employee should be given all relevant information concerning the decision of the first employee to refuse to perform the work in question.

Recommendation 14

The Act should allow an employer to require another employee to perform work which has been refused by an employee who believes it is unusually dangerous, provided that:

- the work does not contravene any provision of the Act or regulations;
- the subsequent employee is advised in writing of the grounds for refusal and the reasons the employer considers the work can be performed safely; and
- the subsequent employee has been advised of his or her right to refuse this work.

The final internal disposition of a refusal to work under section 26 rests with an occupational health officer. The Council concluded this is unfair in two respects: an employee has no right of appeal from the officer's decision and, when an officer rules against an employee, he is making a decision which, if incorrect, could result in serious injury or even death to the employee. The officer is also put at some risk if the ruling is incorrect and the employee is injured. The Council believes a mechanism should be provided to allow an employee to appeal the officer's decision. This would enhance protection for the employee and remove the sole decision-making responsibility from the officer.

Recommendation 15

The Act should allow an employee to appeal a decision made by an occupational health officer who does not support the employee's refusal to work pursuant to section 26.

Several briefs suggested the legislation should authorize an employee member of an occupational health committee who has received appropriate training and certification to stop any work which is in contravention of the legislation and could result in imminent danger to an employee. No proposals were made regarding the responsibility for training and certification of such employees. This issue was debated by the Council at length, but no consensus emerged.

Protection of Employees

The Act protects employees who participate in, or are associated with, any functions of the occupational health committee or exercise their right to refuse to do unusually dangerous work. Employees are not protected for involvement in any other activity to secure their health and safety. For example, an employee may be disciplined for calling an occupational health officer, giving information to an officer or asking questions. The Council believes the protection of employees could be enhanced, and the enforcement of the Act simplified, by the creation of an independent appeal body to which disputes under the Act could be referred.

Recommendation 16

Employees participating in any activity to ensure their health and safety should be protected by the Act.

Recommendation 17

The government should consider including in the Act a provision for the establishment of a board or other agency to which disputes under the Act could be referred.

Alternative Work

Currently an employer may be required to provide temporary alternative work to an employee who has been over-exposed to a harmful substance. Briefs to the Council advocated the extension of this requirement to address two further issues:

- Most standards protect a large proportion of the workforce, but not every employee. There should be protection for employees who are more sensitive to contaminants, including pregnant employees and nursing mothers.

- The sensitization of employees as a result of exposure to certain contaminants has become increasingly common. The Council feels that, wherever possible, employers should be required to provide suitable alternative work when an employee is no longer able to perform his or her usual job as a result of work-related sensitization to a contaminant.

Recommendation 18

Employers should provide, so far as is reasonably practicable:

- protection for employees who are unusually sensitive to a workplace contaminant;

- any necessary additional protection for a pregnant employee and her fetus;

- alternative work for employees who have unusually high sensitivity to a contaminant as a result of over-exposure in the workplace.

Maintenance of Exposure Records

Several briefs noted that records of employee exposure to toxic substances are essential to establish causation in cases of subsequent disease or illness, as well as to provide data for epidemiological studies. It was recommended the employer be required to compile such records and either retain or forward them to a designated agency. The Council endorses this recommendation.

Recommendation 19

The Act should require the employer, or a designated agency, to retain for a specified period all records of exposure of employees to those toxic substances set out in the regulations.

Medical Examinations

The Council believes, where the Act requires an employee to submit to a medical examination, the rights of employees should be specified in the Act.

Recommendation 20

The Act should be amended to specify the rights of employees required to undergo medical examinations pursuant to the Act.

Chapter 4

Employee Participation

Criteria for Establishment of Occupational Health Committees

The Act requires an employer with 10 or more employees to establish an occupational health committee. Approximately one-half of the employers required by law to have occupational health committees do not have functioning committees.

Employers in the larger, higher risk, unionized industries generally comply with this requirement, while those in the smaller, lower risk, non-unionized industries generally do not. Statistics indicate the majority of workplace fatalities occur in workplaces with fewer than ten employees (see Appendix, Table 4). For any given industry, Workers' Compensation Board data show that employees of smaller employers are more at risk than those of larger employers.

The Council believes the committee structure has been an effective deterrent to accidents and fatalities in larger workplaces and concluded it could be equally effective in certain smaller workplaces. The number of employees in a place of employment should, therefore, not be the only criterion for establishing a committee. Statistics also show there is a greater risk of injury or disease in certain industries and workplace activities.

The Council concluded the need to establish a committee should be based on not only the number of employees in, but also the degree of risk associated with, the workplace.

Recommendation 21

The Act should provide for occupational health committees to be established in high risk workplaces where there are fewer than ten employees.

Special cases where an occupational health committee would be desirable

The Council identified other situations where there is a demonstrable need for an occupational health committee, but the law does not require one. For example, at a single place of employment, two or more employers may collectively have more than 10 employees, but individually fewer than 10. To ensure the health and safety of the employees at such a work site, it may be appropriate to have a committee representing all employees.

Recommendation 22

The legislation should require the owner of a high risk workplace to form a committee where two or more employers collectively have more than 10 employees, but individually fewer than 10.

On major construction sites, there are many employers whose individual activities are affected by the total operation. In this situation, it is desirable for one committee to be formed to represent all employees and employers at that site. On the other hand, there are permanent, complex workplaces, such as mines, where it is desirable to have a committee for each distinct part of the operation. In these and similar circumstances, discretion should be provided to determine the most effective arrangement for committees.

Recommendation 23

To better serve the needs of employers and employees, the Act should provide discretion to adapt the requirements for establishing occupational health committees by allowing:

- on a multi-employer work site, the formation of a single occupational health committee;
- on a single employer work site where mutually agreeable to the employer and employees, the formation of more than one occupational health committee.

Workplace Designates

In certain workplaces, the number of employees is insufficient to warrant the establishment of a committee. The Council suggests, where employees so desire, the election of an employee health and safety designate would be an appropriate alternative to ensure employee participation. The designate would act as the contact for employees.

Recommendation 24

The Act should provide for the election of an employee designate in certain workplaces with fewer than 10 employees, where requested by the employees.

Duties of Occupational Health Committees

For committees to function effectively, members must understand their responsibilities and have access to all information needed to address health and safety issues.

The legislation does not adequately specify the duties of occupational health committees. The Council feels the duties as set out in the Act are appropriate, but should be specified in more detail in the regulations or a code of practice.

Furthermore, a more involved committee could contribute substantially to a system that makes both employers and employees internally responsible for health and safety. Regular inspections of the workplace and investigation of accidents by the committee would be an effective means of participating in the responsibility system and would enhance the status of the committee.

Specific responsibilities set out in the regulations or a code of practice would provide support and direction to committees.

Recommendation 25

The Act should be amended to:

- ensure occupational health committee members have reasonable opportunity and means, without loss of benefits, to fulfill their duties;
- enable the duties of occupational health committees to be specified in detail in the regulations or a code of practice.

Access to information by employees

Meaningful participation of employees in workplace safety issues is dependant on their ability to access information necessary to understand and quantify the risks associated with their work. The recent introduction of the Workplace Hazardous Materials Information System is a good example. Emphasis should be given to employer compliance with regulations requiring the posting of information, including inspection reports, notices of contravention and committee minutes.

The Council believes this same right to information should extend to all aspects of health and safety in the workplace.

Recommendation 26

The Act should require that, with due consideration of the right to privacy, all information necessary to ensure compliance with the Act and regulations be readily accessible to employees and occupational health committees.

Consultation

The legislation requires an employer to consult with the occupational health committee. The Council's attention has been drawn to difficulties experienced in the interpretation of "consult". In some cases, it has been taken to mean employee members are informed of a decision after it has been taken by management, and employees have had no opportunity to influence that decision. The Council supports the recommendation that consultation be interpreted to mean discussion which is reflected in the decision made by the employer.

Recommendation 27

Where the Act requires the employer to consult with his or her employees, management decisions should reflect reasonable employer-employee consultation and, where it is alleged this has not happened, the legislation should provide for a review of the decision to ensure the problem identified has been appropriately addressed.

Chapter 5

Enforcement, penalties and other sanctions

Penalties

Briefs to the Council identified two major issues in the areas of enforcement and administration of the legislation and penalties for non-compliance:

- alternatives to prosecution of offenders through the court system; and
- inadequacy of fines under The Occupational Health and Safety Act, compared to other provincial legislation and other jurisdictions.

The Council recognizes the need for increased penalties to encourage employers and employees to take action to improve occupational health and safety, and to encourage compliance with the Act and regulations by making the risks and costs of non-compliance unacceptable. The Council believes certain actions leading to serious injury or death should result in fines and prison sentences comparable to those imposed for criminal negligence.

The present legislation establishes maximum fines of $10,000 with a limit of $5,000 for a first offence, as well as $500 and $1,000 per day for continuing offences. A person found guilty of an offence may also be imprisoned for up to two years.

The Council debated, at length, the optimum level of fines. Although there was consensus they should be raised significantly, the Council was unable to agree on a specific amount for the maximum fine but believes it should be in the range of $250,000 to $500,000. Fines for first offences and continuing offences should be increased pro-rata.

Recommendation 28

Fines for contravening the Act or regulations should be increased substantially.

Alternative Procedures for Enforcement

Concern was expressed in several briefs that the requirements of notices of contravention are not being complied with by the prescribed date. The Council believes this problem could be addressed by introducing a penalty system similar to that utilized for speeding offences.

Recommendation 29

A person who fails to report on the progress made in complying with a notice of contravention, or fails to comply with requirements in the notice, should be subject to a fine, which may be paid without appearing in Court, in the amount of:

- **in the case of failure to report progress, $200;**
- **in the case of non-compliance, $500.**

Disposition of Fines

The Council believes there is some advantage in utilizing fines or surcharges to fund education and delivery of programs in occupational health and safety; therefore, the Council suggests government explore the establishment of a fund for the deposit of fines or surcharges assessed under the Act to be used in this manner.

Recommendation 30

Government should explore the establishment of a fund for the deposit of fines or surcharges assessed under the Act to be used to pay for education and delivery of programs in occupational health and safety.

Chapter 6

Accident Prevention Programs

Occupational Health and Safety Programs

Employers throughout the province have established occupational health and safety programs to address the needs of their specific workplaces. As a result, they have achieved a high standard of workplace health and safety.

The Council believes such programs demonstrate employer commitment to health and safety and are an effective method of reducing workplace accidents. It is essential, in the Council's opinion, that the legislation require employers to develop occupational health and safety programs specific to their workplaces.

The Council realizes it may not be appropriate to require such programs of all employers. The criteria for requiring a program should include the degree of risk associated with the industry and the accident record of the employer. The regulations should, in specified circumstances, provide discretion to exempt an employer from this requirement or direct an employer to establish a program.

Such a program would require:

- a statement of policy;
- identification of health and safety risks;
- allocation of responsibility to ensure implementation;
- an outline of plant design and work processes to address the risks; and
- a plan to train employees in safe work practices.

These programs should be developed in consultation with the occupational health committee, employee designate or employees; endorsed by the chief executive officer; and posted in a prominent place.

Recommendation 31

The Act should require those employers who meet certain criteria to state their policies on occupational health and safety and to implement occupational health and safety programs developed in consultation with their occupational health committees, employees or employee health and safety designates.

Recommendation 32

An occupational health and safety program should include:

- a statement of policy;
- identification of health and safety risks;
- allocation of responsibility to ensure implementation;
- an outline of plant design and work processes to address the risks; and
- a plan to train employees in safe work practices.

Safe Work Practices

Another factor identified in briefs as a major cause of workplace accidents is the lack of training in safe work practices. This is confirmed by the high rate of injury experienced by employees in their first six months of work, and indicates the need for such training.

The Council believes this problem results from:

- lack of employer commitment;
- inadequate internal resources to develop and implement such programs;
- insufficient occupational health and safety personnel to assist in developing programs.

Training is the responsibility of the employer; however, the Council unanimously agrees that the development of training programs in safe work practices must be actively promoted and the standards for these programs must be regulated.

Recommendation 33

The development of training programs in safe work practices by employers and sectoral associations or other agencies should be actively promoted.

Recommendation 34

The legislation should permit the establishment of standards for training programs in safe work practices.

The Council feels that training of employees in safe work practices is paramount to accident prevention; therefore, it recommends that priority be given to the enforcement of those provisions of the legislation which relate to such training.

Recommendation 35

Priority should be given to enforcing the legislation with respect to an employer's duty to train his or her employees in safe work practices.

Chapter 7

Small Business

Ninety-three percent of all businesses in Saskatchewan have fewer than 20 employees and collectively represent a significant portion of the workforce. The Council is seriously concerned about the situation faced by employees in high risk, small businesses. Analysis of the Workers' Compensation Board rate codes suggests a higher injury rate in this sector compared with larger employers. Since January 1, 1985, 109 of 123 fatalities compensated by the Workers' Compensation Board have been in companies with fewer than 20 employees.

Small businesses are also at a disadvantage in developing effective occupational health and safety programs. Individual small businesses cannot support their own occupational health and safety staff and there are limited resources available in the private sector.

Briefs presented to the Council indicated a lack of occupational health and safety awareness in the small business sector on the part of both employers and employees. Educational material distributed to workplaces which addresses the legislation and occupational health and safety practices does not appear to be reaching this audience.

The Council identified the following options to overcome these disadvantages:

- Include occupational health and safety education in the curricula of high schools and adult educational institutions.
- Increase and promote awareness of health and safety issues among employers and employees, either directly or through the media.
- Co-ordinate the distribution of information through existing contacts with small business.
- Encourage, in co-operation with the Workers' Compensation Board, the promotion of sectoral associations.

Existing sectoral programs show excellent potential; however, the Council believes the quality of sectoral programs should be monitored.

Recommendation 36

The government should explore the possibility of:

- including occupational health and safety education in the curricula of high schools and adult educational institutions;
- utilizing government programs directed at small businesses to promote awareness of occupational health and safety legislation and practices;
- promoting safety awareness through the media.

Recommendation 37

Sectoral associations and other appropriate agencies should be promoted as an effective means of enabling small businesses to comply with their duties to provide training and occupational health and safety programs. Such training and programs should be monitored.

Chapter 8

Agriculture

Approximately 80,000 people in Saskatchewan derive their livelihood from farming. Most are self-employed or part of a family operation, but approximately 18,000 (23 percent) are paid employees. There are 66,000 farms spread over the lower half of the province, compared to less than 40,000 non-farming firms.

During 1988, 18 people died as a result of work-related accidents on the farm. Twenty-three work-related fatalities were recorded in all non-agricultural industries.

This situation is cause for concern within the farm community and society generally. The increasing use of agricultural chemicals, the size and complexity of farm machinery and the introduction of intensive animal husbandry has radically changed the farm work environment and has created an urgent need for a new approach to farm safety.

The Council shares this concern; however, limited input was received from the farm community and the agricultural sector. Consequently, the Council's discussion was limited to current farm safety programming and identifying those issues which must be addressed.

For the purposes of the Act, farming as an industry is the same as any other industry. Farms are workplaces; therefore, both self-employed and paid workers fall within the scope of the Act.

Because there are over half again as many farms as businesses and those farms are physically more dispersed, the current approach in dealing with agriculture focuses on education rather than inspections. In 1986, the farm health and safety program was introduced. In addition to providing audiovisual materials, setting up safety displays at agricultural fairs and trade shows and utilizing the media to provide information on farm safety, presentations are made to school students from kindergarten to grade 12. In 1989-90, 120 presentations are scheduled.

The Council identified several issues which should be addressed in order to develop an effective approach to farm health and safety, including:

- responsibility for farm safety;
- exemption of self-employed farmers and paid employees from the Act;
- enactment of regulations specific to farming;
- enforcement versus education as the preferred approach to farm health and safety; and
- funding of health and safety programs related to farming.

The Council, in considering these issues, concluded the Act is based on enforcement in an industrial context and may not be appropriate for dealing with independent farmers.

Given the lack of input from the farm community, the Council did not feel it could adequately address these questions. The Council believes these important issues should be addressed as a matter of the utmost urgency by a separate council, made up of representatives of agriculture, health and safety agencies and workers' compensation. As well, the Council urges the government to exercise leadership in agriculture health and safety as it has done in other sectors.

Recommendation 38

The government should address the serious issues surrounding the health and safety of farmers and farm employees as a matter of the utmost urgency. As a first step, a council could be formed, representative of all sectors of the farming community and supported by appropriate resource persons from the Workers' Compensation Board and health and safety agencies, to advise the government on an appropriate approach to the health and safety of Saskatchewan farmers and farm employees.

Appendix

Table 1

Workers' Compensation Board Claims by Type and Annual Compensation Costs

Year	Fatal	Permanent Disability	Lost Time	No Time	Compensation Costs* $ millions
1972	49	402	11,704	14,788	16.0
1973	31	278	11,208	13,352	20.1
1974	53	174	13,134	15,186	21.1
1975	45	369	13,776	15,432	23.1
1976	40	530	14,989	19,103	30.4
1977	32	657	15,546	19,730	46.0
1978	47	714	14,722	18,575	53.4
1979	42	732	16,219	21,441	54.5
1980	58	487	17,182	20,743	65.0
1981	76	763	17,858	21,334	72.6
1982	41	592	16,285	20,024	77.5
1983	35	519	15,492	18,002	121.5
1984	40	581	15,971	21,488	112.1
1985	25	318	16,369	20,725	109.5
1986	29	190	16,402	20,413	112.7
1987	27	132	15,354	21,272	114.7
1988	23	110	15,075	20,707	120.7

* Includes costs for compensation, vocational rehabilitation, medical aid, physical rehabilitation, safety grants, and administrative costs.

Source: Saskatchewan Workers' Compensation Board Annual Reports, 1972-1988, Table 2 and Statement 2

Table 2

Agricultural Fatalities

Year	Fatalities
1980	13
1981	14
1982	15
1983	26
1984	28
1985	25
1986	26
1987	16
1988	18

Source: Coroner's Office, Saskatchewan Justice

Table 3

Distribution of Firms by Number of Employees and Rate of Assessment

Rate of Assessment	*No. Firms With 0-5 **Employees	5-10	10-20	20-30	30-50	50-100	100+	Total
6.00 +	1,992	131	84	33	19	13	7	2,279
5.00 - 6.00	3,510	166	97	24	23	17	6	3,843
4.00 - 5.00	2,443	250	155	54	52	28	21	3,003
3.00 - 4.00	1,016	115	89	17	17	16	2	1,272
2.50 - 3.00	1,270	16	6	2	1	2	1	1,298
2.00 - 2.50	444	94	53	8	11	7	6	623
1.50 - 2.00	2,492	433	201	79	90	55	49	3,399
1.00 - 1.50	3,766	602	378	168	129	70	60	5,173
.50 - 1.00	5,069	892	395	116	104	70	69	6,715
.00 - .50	4,797	926	474	170	123	94	63	6,647
Total	26,799	3,625	1,932	671	569	372	284	34,252

* Number of firms refers to number of rate codes. Some employers have more than one rate code.

** Number of employees extrapolated from payroll @20,000 payroll = 1 employee

Source: Saskatchewan Workers' Compensation Board files

Table 4

Size of Saskatchewan Workplaces by Employers, Employees and Fatalities, 1988

Size of Workplace # Employees	Number of Employers	Number of Employees	Fatalities
1 - 10	30,000	68,000	
	88%	20%	89%
11 - 20	2,000	33,000	
	6%	10%	0%
21+	2,000	229,000	
	6%	70%	11%
Total	34,000	330,000	100%

Source: Saskatchewan Workers' Compensation Board files and Saskatchewan Human Resources, Labour and Employment, Occupational Health and Safety Branch files